

No. 14834

United States
Court of Appeals
for the Ninth Circuit.

PETER COTTRELL SCOTT,

Appellant,

vs.

NORMA SMITH,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

DEC 27 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

FRED A. WOOL, ESQ.,

DONALD B. RICHARDSON, JR., ESQ.,

612 First Nat'l Bank Bldg.,

San Jose, California,

Attorneys for Bankrupt and Appellant.

LISTON O. ALLEN, ESQ.,

EMANUEL P. RAZETO, ESQ.,

709 Financial Center Bldg.,

Oakland, California,

Attorneys for Petitioner and Appellee.

In the Southern Division of the United States District Court for the Northern District of California

No. 42377 In Bankruptcy

In the Matter of
PETER COTTRELL SCOTT,

Bankrupt.

SPECIFICATION OF OBJECTIONS
TO DISCHARGE

To: The Honorable Judges of the District Court of the United States, and

To: The Honorable Burton J. Wyman, Referee in Bankruptcy:

Norma Smith of 1464 Crow Canyon Road, Hayward, County of Alameda, State of California, a creditor of the above-named bankrupt, does hereby oppose the granting to said bankrupt of a discharge from his debts and specifies the following as grounds of objection:

1. (a) On or about January 12, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: a house and lot known as 1520 Hicks Avenue, San Jose, California, with intent to hinder, delay and defraud his creditors.

(b) On or about July, 1953, subsequent to the first day of the twelve months immediately preced-

ing the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: a 1952 Cadillac automobile with intent to hinder, delay and defraud his creditors.

2. On or about February 1, 1945, the bankrupt obtained money to wit: \$5,000.00 from Norma Smith, the objector herein, by publishing or causing to be made or published a materially false statement in writing respecting his financial condition, to wit: that in order to obtain the said loan of \$5,000.00 he falsely stated in writing that said loan was secured by a deed of trust of even date with note whereas he knew at all times that said loan was to be unsecured and that the lender, Norma Smith, relied and believed in said representation in advancing said \$5,000.00.

3. On or about January, 1951, the bankrupt as the agent of Norma Smith, the objector herein, sold for her account her Buick automobile and although he recovered \$615.00 from said sale failed to account or pay the same over to her or satisfactorily explain the said loss.

/s/ NORMA SMITH,
Petitioner.

/s/ LISTON O. ALLEN,
/s/ EMANUEL P. RAZETO,
Attorneys for Petitioner.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954. Referee.

[Title of District Court and Cause.]

ORDER, JUDGMENT AND DECREE SUS-
TAINING OPPOSITION TO BANKRUPT'S
DISCHARGE IN BANKRUPTCY AND
DENYING SUCH DISCHARGE

Whereas, Peter Cottrell Scott heretofore was adjudged a bankrupt, by the above-entitled court, in the above-entitled matter, upon a petition filed, in said court, by said Peter Cottrell Scott, on December 18, 1953, and

Whereas, on June 15, 1954, Norma Smith filed, in the above-entitled matter, her verified "Specification of Objections to Discharge," opposing the discharge in bankruptcy of the aforesaid bankrupt, in which said specification of objections, said objector averred that she, as a creditor of said bankrupt was opposed to the granting, to said bankrupt, of a discharge of his debts, on the following grounds:

"1. (a) On or about January 12, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: a house and lot known as 1520 Hicks Avenue, San Jose, California, with intent to hinder, delay and defraud his creditors.

"(b) On or about July, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: a 1952

Cadillac automobile with intent to hinder, delay and defraud his creditors.

“2. On or about February 1, 1945, the bankrupt obtained money, to wit: \$5,000.00 from Norma Smith, the objector herein, by publishing or causing to be made or published a materially false statement in writing respecting his financial condition, to wit: that in order to obtain the said loan of \$5,000.00 he falsely stated in writing that said loan was secured by a deed of trust of even date with note whereas he knew at all times that said loan was to be unsecured and that the lender, Norma Smith, relied and believed in said representation in advancing said \$5,000.00.

“3. On or about January, 1951, the bankrupt as the agent of Norma Smith, the objector herein, sold for her account her Buick automobile and although he recovered \$615.00 from said sale failed to account or pay the same over to her or satisfactorily explain the said loss,” and

Whereas, a hearing was held upon the aforesaid specification of objections to the bankrupt's discharge in bankruptcy, before the undersigned referee in bankruptcy, on July 27, 1954, after due notice to the directly interested parties, during the course of which said hearing both the objector and the bankrupt were sworn and gave testimony, under oath, and

Whereas, under all of the circumstances and the facts shown by the evidence then offered and received, the undersigned referee in bankruptcy could not, and does not believe that the account given by

the bankrupt, under oath, relative to the manner in which the words, "This note is secured by a Deed of Trust bearing even date herewith," were made to appear upon the original promissory note (offered and received in evidence during the aforesaid hearing) was, or is, a true, or correct, account of the manner in which said last mentioned words were made so to appear on said promissory note, but does believe, and so finds, that said bankrupt, by said last mentioned words, induced said Norma Scott to rely on the truth and correctness thereof and that she, so relying, made the aforesaid loan in the belief that said loan was to be, and was, secured by a deed of trust, as on said promissory note stated, and

Whereas, the undersigned referee in bankruptcy finds, that the allegations set forth in Paragraph 2 of the aforesaid "Specification of Objections," are true and correct, and

Whereas, upon the record, as it now stands, the undersigned referee in bankruptcy does not feel in a position to find, with any degree of certainty and in fairness to each of the directly interested parties, whether, or not, the allegations set forth in Paragraph 1(a) and/or (b) of said "Specification of Objections to Discharge" are true or correct, or otherwise, and

Whereas, upon the record, as it now stands, the undersigned referee in bankruptcy does not feel in a position to find, with any degree of certainty, and in fairness to each of the directly interested parties, whether, or not, the bankrupt has "failed to account * * * or satisfactorily explain the loss" of

the sum of \$615.00, or any part thereof, as averred in Paragraph 3 of said "Specification of Objections to Discharge" and

Whereas, the undersigned referee in bankruptcy concludes, as matters of law:

(1) That the opposition to the bankrupt's discharge in bankruptcy herein should be sustained on the ground specified in Paragraph 2 of the aforesaid "Specification of Objections to Discharge";

(2) That Peter Cottrell Scott should be denied his discharge in bankruptcy herein for the last mentioned reason;

(3) That nothing herein contained, or set forth, in anywise, should be construed so as to preclude, or prevent, said Norma Smith from pursuing, in some other forum, whatever right, or rights, she may be advised that legally, she may have, as regards the matters set forth in Paragraph 1(a) and/or (b) and/or also in Paragraph 3 of the aforesaid "Specification of Objections to Discharge," so long as, in so pursuing such right, or rights (if any right she may have) said Norma Smith does not interfere, in any way whatsoever, with any right, or rights, which, on the date of the filing of the initial petition in bankruptcy herein, passed from Peter Cottrell Scott, to the bankruptcy estate of said Peter Cottrell Scott.

It, Therefore, Hereby Is Ordered, Adjudged and Decreed:

1. That the opposition to said bankrupt's discharge in bankruptcy herein should be, and is, Sustained on the ground specified in Paragraph 2 of the

aforesaid "Specification of Objections to Discharge."

2. That based upon the record herein, and in the light of the specific findings of fact with regard to the allegations set forth in Paragraph 2 of the aforesaid "Specification of Objections to Discharge," and pursuant to, and in compliance with, Paragraph (2) of the hereinbefore set forth conclusions of law, the discharge in bankruptcy herein of Peter Cottrell Scott be, and said discharge is, Denied.

3. That nothing herein contained is intended to be, nor is it to be, construed, that said Norma Smith, in any way whatsoever, is precluded, or prevented, from pursuing, in some other forum, whatever right, or rights, she may be advised that, legally, she may have, as regards the matters set forth in Paragraph 1(a) and/or (b) and/or in Paragraph 3 of the aforesaid "Specification of Objections to Discharge," so long as, in so pursuing such right, or rights (if any right she may have), said Norma Smith does not interfere, in any way whatsoever, with any right, or rights, which, on the date of the filing of the initial petition in bankruptcy herein, passed from Peter Cottrell Scott, to the bankruptcy estate of said Peter Cottrell Scott.

Dated: September 21st, 1954.

/s/ BURTON J. WYMAN,

Referee in Bankruptcy.

[Endorsed]: Filed September 21, 1954, Referee.

[Endorsed]: Filed September 22, 1954, U.S.D.C.

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER BY JUDGE

To: Burton J. Wyman, Esq., Referee in Bankruptcy.

The petition of Peter Cottrell Scott respectfully represents:

That your petitioner is the bankrupt herein;

That Norma Smith, a creditor of the above-named bankrupt, filed herein her Specification of Objections to Discharge of the above-named bankrupt, verified the 14th day of June, 1954, and thereafter on the 27th day of July, 1954, the said Specification of Objections to Discharge came on for hearing on briefs and oral argument submitted by petitioner and said Norma Smith;

That on the 21st day of September, 1954, an Order was made by the above-named Referee in Bankruptcy and entered herein sustaining the objection to discharge of the above-named bankrupt on grounds set forth in Paragraph 2 of the aforesaid Specification of Objections to Discharge, and denying the discharge in bankruptcy of the above-named bankrupt; that a copy of said Order, designated "Exhibit A," is attached hereto and made a part hereof; that your petitioner is aggrieved by the said Order;

That the said Order is erroneous in the following respects and for the following reasons:

1. The referee erred in respect to said Order, in

that the referee's finding on page 3 of said Order, lines 10 to 26, that petitioner induced Norma *Scott* to loan money to petitioner by a false statement in writing was clearly erroneous, in that the evidence fails to support said finding as the uncontradicted testimony of petitioner and said Norma Smith was that the aforementioned alleged false statement in writing was neither delivered to Norma Smith, received by Norma Smith, nor known to Norma Smith until several days subsequent to the making of said loan by Norma Smith;

2. The referee erred in respect to said Order, in that the referee's finding on page 3 of said Order, lines 27 to 30, that the allegations set forth in Paragraph 2 of the aforesaid "Specification of Objections" are true and correct, was clearly erroneous, in that the evidence fails to support said finding, as the uncontradicted evidence was that said alleged false statement in writing did not induce Norma Smith to make the said loan to petitioner, and that Norma Smith did not rely on said alleged false statement in writing in making said loan, and that petitioner did not obtain money or property on credit or obtain an extension or renewal of credit by making or causing to be made a false statement in writing respecting his financial condition;

3. The referee erred in respect to said Order, in his conclusions of law numbered 1 and 2, that specification contained in Paragraph 2 of "Specification to Objections to Discharge" filed by Norma Smith was sustained and that for this reason petitioner's

discharge in bankruptcy was denied; said conclusions of law are erroneous in that (a) the alleged material false statement in writing respecting the bankrupt's financial condition consisted of the words, "This note is secured by a Deed of Trust bearing even date herewith" appearing on a promissory note given by petitioner to Norma Smith; according to the law such a statement is not one "respecting financial condition" within the meaning of Bankruptcy Act Sec. 14(c)(3); (b) the findings of fact upon which said conclusions of law are based are not supported by the evidence, in that all of the evidence was that the aforesaid false statement in writing was made after money was loaned by Norma Smith to petitioner; (c) the aforesaid alleged false statement in writing respecting financial condition did not, according to uncontradicted evidence, enable petitioner to obtain money or property on credit or obtain an extension or renewal of credit;

4. The referee erred in respect to said Order in that said Order contains no finding that the aforesaid alleged false statement in writing was a "material" false statement as required by provision of Bankruptcy Act Sec. 14(c)(3), and for this reason the referee's conclusions of law numbers 1 and 2 are erroneous;

5. The referee erred in respect to said Order in that said Order contains no finding that the aforesaid alleged false statement in writing was intentionally made by petitioner with an intent to defraud his creditor as required by provision of Bank-

ruptcy Act Sec. 14(c)(3), and for this reason the referee's conclusions of law numbers 1 and 2 are erroneous;

6. The referee erred in respect to said Order in that orders numbered 1 and 2 are erroneous for the reasons hereinabove set forth;

Wherefore, your petitioner prays that said Order be reviewed by a judge in accordance with the provisions of the Act of Congress relating to Bankruptcy, and that said Order be modified in the following respects:

1. That under the evidence it is not true that petitioner obtained money or property on credit nor obtained an extension or renewal of credit by making, or causing to be made, a material false statement in writing respecting his financial condition;

2. That as a matter of law the written statement, "This note secured by a deed of trust bearing even date herewith" is not a statement respecting financial condition so as to bar petitioner's discharge in bankruptcy under provisions of Bankruptcy Act, Sec. 14(c)(3);

3. That under the evidence the aforementioned false statement in writing did not induce Norma Smith to make a loan to petitioner;

4. That the aforesaid false statement in writing was not material under the circumstances of this case;

5. That according to the evidence herein, the

aforesaid false statement in writing was not intentionally made by petitioner with intent to defraud his creditors;

6. That petitioner is entitled to a discharge in bankruptcy, and that the same is granted;

7. For such other and further relief as is just.

Dated: September 30, 1954.

/s/ PETER COTTRELL SCOTT,
Petitioner.

/s/ FRED A. WOOL,
Attorney for Petitioner.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed September 30, 1954, Referee.

[Title of District Court and Cause.]

CERTIFICATE AND REPORT OF REFEREE
RELATIVE TO PETITION FOR REVIEW
OF REFEREE'S ORDER, JUDGMENT
AND DECREE SUSTAINING OPPOSITION
TO BANKRUPT'S DISCHARGE IN
BANKRUPTCY AND DENYING SUCH
DISCHARGE

To Honorable Louis E. Goodman, United States
District Judge for the Northern District of
California:

I, Burton J. Wyman, one of the referees in bank-

ruptcy of the above-entitled court and the referee primarily in charge of the above-entitled bankruptcy proceeding, hereby certify and report that this specific matter is now before the above-entitled United States District Court, sitting as an appellate court*, upon the following verified "Petition for Review of Referee's Order by Court":

"The petition of Peter Cottrell Scott respectfully represents:

"That your petitioner is the bankrupt herein;

"That Norma Smith, a creditor of the above-named bankrupt, filed herein her Specification of Objections to Discharge of the above-named bankrupt, verified the 14th day of June, 1954, and thereafter on the 27th day of July, 1954, the said Specification of Objections to Discharge came on for hearing on briefs and oral argument submitted by petitioner and said Norma Smith;

"That on the 21st day of September, 1954, an Order was made by the above-named Referee in Bankruptcy and entered herein sustaining the objection to discharge of the above-named bankrupt on grounds set forth in Paragraph 2 of the aforesaid Specification of Objections to Discharge, and denying the discharge in bankruptcy of the above-named

*"In passing upon a petition for review of a referee's order, 'the proceeding is in substance an appeal from the court of bankruptcy—i.e., the referee—to the District Court.' *In re Pearlman* (C.C.A.) 16 F. (2d) 20, 21."

In re Big Blue Min. Co., (D.C., N.D., Calif.) 16 F. Supp. 50, 51 (Opinion by St. Sure, District Judge).

bankrupt; that a copy of said Order, designated 'Exhibit A,' is attached hereto and made a part hereof; that your petitioner is aggrieved by the said Order;

"That the said Order is erroneous in the following respects and for the following reasons:

"1. The referee erred in respect to said Order, in that the referee's finding on page 3 of said Order, lines 10 to 26, that petitioner induced Norma *Scott* to loan money to petitioner by a false statement in writing was clearly erroneous, in that the evidence fails to support said finding as the uncontradicted testimony of petitioner and said Norma Smith was that the aforementioned alleged false statement in writing was neither delivered to Norma Smith, received by Norma Smith, nor known to Norma Smith until several days subsequent to the making of said loan by Norma Smith;

"2. The referee erred in respect to said Order, in that the referee's finding on page 3 of said Order, lines 27 to 30, that the allegations set forth in Paragraph 2 of the aforesaid 'Specification of Objections' are true and correct, was clearly erroneous, in that the evidence fails to support said finding, as the uncontradicted evidence was that said alleged false statement in writing did not induce Norma Smith to make the said loan to petitioner, and that Norma Smith did not rely on said alleged false statement in writing in making said loan, and that petitioner did not obtain money or property on credit or obtain an extension or renewal of credit by making or causing to be made a false statement in writing respecting his financial condition;

“3. The referee erred in respect to said Order, in his conclusions of law numbered 1 and 2, that specification contained in Paragraph 2 of ‘Specifications to Objections to Discharge’ filed by Norma Smith was sustained and that for this reason petitioner’s discharge in bankruptcy was denied; said conclusions of law are erroneous in that (a) the alleged material false statement in writing respecting the bankrupt’s financial condition consisted of the words, ‘This note is secured by a Deed of Trust bearing even date herewith’ appearing on a promissory note given by petitioner to Norma Smith; according to the law such a statement is not one ‘respecting financial condition’ within the meaning of Bankruptcy Act Sec. 14(c)(3); (b) the findings of fact upon which said conclusions of law are based are not supported by the evidence, in that all of the evidence was that the aforesaid false statement in writing was made after money was loaned by Norma Smith to petitioner; (c) the aforesaid alleged false statement in writing respecting financial condition did not, according to uncontradicted evidence, enable petitioner to obtain money or property on credit or obtain an extension or renewal of credit;

“4. The referee erred in respect to said Order in that said Order contains no finding that the aforesaid alleged false statement in writing was a ‘material’ false statement as required by provision of Bankruptcy Act Sec. 14(c)(3), and for this reason the referee’s conclusions of law numbers 1 and 2 are erroneous;

“5. The referee erred in respect to said Order in

that said Order contains no finding that the aforesaid alleged false statement in writing was intentionally made by petitioner with an intent to defraud his creditor as required by provision of Bankruptcy Act Sec. 14(c)(3), and for this reason the referee's conclusions of law numbers 1 and 2 are erroneous;

"6. The referee erred in respect to said Order in that orders numbered 1 and 2 are erroneous for the reasons hereinabove set forth;

"Wherefore, your petitioner prays that said Order be reviewed by a judge in accordance with the provisions of the Act of Congress relating to Bankruptcy, and that said Order be modified in the following respects:

"1. That under the evidence it is not true that petitioner obtained money or property on credit nor obtained an extension or renewal of credit by making, or causing to be made, a material false statement in writing respecting his financial condition;

"2. That as a matter of law the written statement, 'This note secured by a deed of trust bearing even date herewith' is not a statement respecting financial condition so as to bar petitioner's discharge in bankruptcy under provisions of Bankruptcy Act, Sec. 14(c)(3);

"3. That under the evidence the aforementioned false statement in writing did not induce Norma Smith to make a loan to petitioner;

"4. That the aforesaid false statement in writing was not material under the circumstances of this case;

“5. That according to the evidence herein, the aforesaid false statement in writing was not intentionally made by petitioner with intent to defraud his creditors;

“6. That petitioner is entitled to a discharge in bankruptcy, and that the same is granted;

“7. For such other and further relief as is just.

“Dated: September 30, 1954.

“/s/ PETER COTTRELL SCOTT,

“Petitioner.

“/s/ FRED A. WOOL,

“Attorney for Petitioner.”

[Verification omitted for sake of brevity].

(Although the copy of the “Order, Judgment and Decree,” etc., referred to on page one of said petition for review, and, by said reference, made a part of said petition for review has been omitted, at this point, from this certificate and report, the original thereof later will be inserted in said certificate and report, as one of the parts of said certificate and report.)

The circumstances which gave rise to the aforesaid petition for review are as follows:

On June 15, 1954, the following verified “Specification of Objections to Discharge” were filed in the above-entitled proceeding:

“Norma Smith of 1464 Crow Canyon Road, Hayward, County of Alameda, State of California, a creditor of the above-named bankrupt, does hereby

oppose the granting to said bankrupt of a discharge from his debts and specifies the following as grounds of objection:

“1. (a) On or about January 12, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: a house and lot known as 1520 Hicks Avenue, San Jose, California, with intent to hinder, delay and defraud his creditors.

“(b) On or about July, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: a 1952 Cadillac automobile with intent to hinder, delay and defraud his creditors.

“2. On or about February 1, 1945, the bankrupt obtained money, to wit: \$5,000.00 from Norma Smith, the objector herein, by publishing or causing to be made or published a materially false statement in writing respecting his financial condition, to wit: that in order to obtain the said loan of \$5,000.00 he falsely stated in writing that said loan was secured by a deed of trust of even date with note whereas he knew at all times that said loan was to be unsecured and that the lender, Norma Smith, relied and believed in said representation in advancing said \$5,000.00.

“3. On or about January, 1951, the bankrupt as the agent of Norma Smith, the objector herein, sold

for her account her Buick automobile and although he recovered \$615.00 from said sale failed to account or pay the same over to her or satisfactorily explain the said loss.

“/s/ NORMA SMITH,
“Petitioner.

“/s/ LISTON O. ALLEN,
“/s/ EMANUEL P. RAZETO,
“Attorneys for Petitioner.

“LISTON O. ALLEN,
“EMANUEL P. RAZETO,
“709 Financial Center Bldg.,
“Oakland 12, California.”

[Verification omitted for sake of brevity.]

The opposition to the bankrupt's discharge based on the aforesaid specification of objections, after due notice to the directly interested parties, came on for hearing before the undersigned referee in bankruptcy, on July 27, 1954, at which time there appeared, Emanuel P. Razeto, Esq., who, with Liston O. Allen, Esq., are the attorneys for Mrs. Norma Smith, the objecting creditor; Francis P. Walsh, Esq., the attorney for Ramon J. Truman, the trustee in bankruptcy herein; and Fred A. Wool, Esq., the attorney for the bankrupt.

During the course of the hearing, evidence, both oral and documentary, was offered and received, the

testimony of Mrs. Norma Smith, said objecting creditor given, on direct examination in response to questions by her counsel, in substance being as follows:

I reside at 1464 Crow Canyon Road, Hayward: the \$5,000.00 note which you show me has the signature of Mr. Peter C. Scott.

[At this point, the promissory note was introduced in evidence as "Objecting Creditor's No. 1."] It reads:

"This flat note hereinafter stated we jointly and severally promise to pay to Norma Smith as joint tenants or order the principal sum of (\$5,000.00) Five Thousand Dollars with interest from date hereof on the amounts of principal sum remaining from time to time unpaid until said principal sum is paid, at the rate of ($4\frac{1}{2}\%$) Four and one-half per cent per annum. Interest payable semi-annually on February 5th and August 5th of each year and continuing for a period of (10) ten years. Providing, however, that the whole of the principal sum remaining unpaid shall be paid in full on or before (10) ten years after date. Any or all of the principal sum may be paid at any time during the period of this note without penalty.

"This note is secured by a Deed of Trust bearing even date herewith."

I gave Peter C. Scott and Elizabeth A. Scott \$5,000.00 for that note; I never received a Deed of Trust securing the note; Mr. Scott told me there is not in existence a Deed of Trust securing this note; the first time Mr. Scott informed me that the note

was not secured by a Deed of Trust was October, 1953; I had gone to San Jose and had met Mr. Burkhalter (who has now passed away) and we met Mr. Scott; we met him in front of Cathay Motors in San Jose, on South First Street; I told Mr. Scott I heard he sold his house; I asked him if that was true and I asked him about the Deed of Trust, then he told us, in the conversation, there had been no Deed of Trust given at any time; he said the money was in escrow and would be paid in about a week's time and he would pay me then, he wanted to pay it in full at that time; that was the first I had known there was no Deed of Trust; at that time (during the aforesaid conversation) he assured me that I would be paid out of an escrow; I think he said the escrow was in the California Pacific Title—afterwards Mr. Burkhalter told me—the three of us were there when he told me about the escrow—we were all present, sitting in Mr. Scott's car at the time.

I never received any money from the escrow; I have not been paid on this note.

The \$5,000.00 note is included in the third item of Schedule A-3 ("Creditors Whose Claims Are Unsecured") of the bankrupt's schedules in bankruptcy, signed by Peter C. Scott, which you show me, the third item reading: "Norma Smith, 1464 Crow Canyon Road, R.F.D. Hayward, California; Note \$10,615.00."

Going back to February 1, 1945, when this note was executed by Mr. Scott and (was) given in exchange for the \$5,000.00, I received it from Mr.

Scott; I don't know who prepared it—I presume Mr. Scott; the note there is the way it came to me—handed to me by Mr. Scott.

Prior to the lending to Mr. Scott of the \$5,000.00 in question he said it would be secured by a Deed of Trust—a mortgage on the house, 1520 Hicks Avenue, San Jose; in the conversation, he said that they were refinancing their home and I might as well have the interest as paying the bank or someone else; I don't remember just what it was.

My relationship to Mr. and Mrs. Scott at that time—February 1, 1945—was very, very close, about the closest friends I had; I was a widow, at that time.

Mr. Scott has made payments of interest to me under the note, twice a year up until—I think the last one was in 1952; I don't remember just exactly; neither during this period, nor at any time, when he made payments to me, did he tell me the note was not secured by a Deed of Trust.

If I had known that the note was not secured by a Deed of Trust, I would not have loaned him the money, at that particular time; I believed him when he told me it was secured by a Deed of Trust—I had no reason to believe otherwise.

At no time in January, 1953, did Mr. Scott inform me that he had sold, or transferred the house; he did not pay me any money at that time.

In August, 1953, I had a conversation with Mr. Scott regarding my loan; I went to San Jose just before I went on vacation, the last of the month; I asked him to put the two notes on my mortgage

on the house; he said he would look it up; he did not know whether the papers were at the house or the bank; he would take care of it; at that time he did not tell me that it was not secured by a Deed of Trust, nor that the house had been sold.

(At the close of the direct testimony counsel for the bankrupt made a motion to strike out the testimony of the objecting creditor, on "Point No. 2" of the specification on the ground, in substance, that such testimony did not tend to show, as required by Section 14c(3) of the Bankruptcy Act [11 USCA, § 32c(3)] that the bankrupt had "obtained money or property on credit * * * by making, or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial condition," but ruling on this point was reserved.)

On cross-examination, the objecting creditor, questioned by counsel for the bankrupt, in substance testified:

I paid this \$5,000.00 to Mr. Scott by a check; I don't recall when I gave him the check—it was 1945, sometime in February, 1945; I got the note about the same time; I got the note after I gave the check; I don't remember how long after—I think several days elapsed; the note was given to me in San Jose; I was down visiting the Scotts at that time; the check was given to Mr. Scott in San Jose; both Mr. and Mrs. Scott were there when I gave the check; I took it down on a week end and gave it to them; I visited back and forth with the Scotts for a number of years; Mrs. Elizabeth Scott now

is dead, she died January, 1952; the note never was discussed at any of the meetings with the Scotts from 1945 to 1952.

At that time Mr. Scott was engaged in the used car business; I sometimes would be down to see them twice a week; Mrs. Scott was teaching at the University—I used to go down week ends; when she was teaching during summer school, she would stay with us in Alameda.

Immediately following Mrs. Scott's death, I did not discuss with him anything about his financial affairs; I did not think it was necessary; I had a mortgage, so I thought—the interest was paid, so, I had no occasion to; I did not inquire; I did not think it necessary.

Peter Cottrell Scott, the bankrupt, called as a witness on behalf of the objecting creditor and questioned by counsel for the objecting creditor, testified, in substance:

I now reside at 2015 Ray Drive, Burlingame, California; on February 1, 1945, I owned a house at 1520 Hicks Avenue, San Jose; at that time that house had a mortgage against it; the mortgage then was in the name of A. J. De Smet; I am not positive what the balance due at that time was, but approximately \$6,000.00; the Deed of Trust was reconveyed to me somewhere (near) March 24, 1945; at a later date, I again encumbered this house; at the time, on about February 1, 1945, when Mrs. Smith loaned me the \$5,000.00 my house on Hicks Avenue was encumbered by A. J. De Smet.

When I wrote this note stating this is secured by

a Deed of Trust of even date herewith, there was no Deed of Trust; this note is a note that I copied from a note that I had in my possession; I mean, among some papers that I had, and it had this particular type of note on it and that is what I copied and later gave Mrs. Smith; I typed this note myself, from the first word to the last word; I believe I understood what I had written.

I owned other property at that time—a lot adjacent to the Hicks Avenue property; that was under a separate Deed (from) the Hicks Avenue property; I never gave Mrs. Smith a Deed of Trust on that lot; I am not positive whether that lot was encumbered on February 1, 1945; I purchased it and after due time paid it, over a period of time; I did not give Mrs. Smith a Deed of Trust at any time.

That is my signature on the photostatic copy of the Deed which you show me.

(At this point the Deed was offered in evidence as Objecting Creditor's No. 2 and reads as follows.)

“I, Peter C. Scott, a single man, the First Party, hereby grant to Barbara D. Stevens, a single woman, the Second Party, all of the real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

“Lot Twenty (20) in Block Two (2) as laid down, designated and delineated upon that certain Map entitled ‘Map of Cherry Park’ recorded October 15, 1923, in the Office of the County Recorder of the

County of Santa Clara, State of California, in Book
R of Maps, Page 42.

“Witness my hand this 13th of January, 1953.

“PETER C. SCOTT.

“State of California,
County of Santa Clara—ss.

“On this 13th day of January, 1953, before me,
Fred A. Wool, a Notary Public in and for said
County and State, personally appeared Peter C.
Scott, being the person whose name is subscribed
to the foregoing instrument, and acknowledged to
me that he executed the same.

“FRED A. WOOL,
“Notary Public.”

[“Mr. Razeto: * * * This Deed was recorded
January 26 at 1:30 o'clock p.m., 1953, and bears
revenue stamps of \$17.60.”]

“By this Deed, you alleged, or tried to transfer
your title to the Hicks Avenue property to Barbara
Stevens. Is that right?

“A. I did transfer it.”

That was on January 13, 1953, when I signed
this Deed; I married Barbara Stevens the next day,
January 14; when I executed this Deed, in the office
of my attorney, Fred A. Wool, on January 13, 1953,
Mrs. Stevens was with me, at the time; the three of
us, I, Mrs. Stevens and Mr. Wool, were there; the
price, the consideration for this house was \$16,-
000.00; she was to pay me \$16,000.00 in cash and

this was deposited in escrow; at that time I did not inform Mrs. Stevens or Mr. Wool that I had promised a Deed of Trust on this house to Mrs. Smith; I did not give any instructions to the title company to pay out of the \$16,000.00, \$5,000.00 to Mrs. Smith; A. J. De Smet was paid from the proceeds of that \$16,000.00; I paid \$10,500.00 to A. J. De Smet; I assume that went on record at the same time the Deed went on record, January 26, 1953, which was in the week after I married Mrs. Stevens.

In July, 1953, I transferred to my wife a 1948 Cadillac, Model Sixty-two sedan, and she still has that automobile; the consideration for the automobile was \$1,100.00, what she paid for it; I haven't ownership in it.

On December 18, 1953, when I filed the petition in bankruptcy, Mrs. Smith had a credit on my books for \$615.00 for the sale of a 1941 Buick automobile; I was her agent for the sale of her automobile and had recovered \$615.00 for the sale of same and I did not turn that money over to her; I accounted to her verbally for that money.

Cross-examined by his counsel, the bankrupt, in substance, testified:

I recall approximately the amount of the disbursements in connection with the sale of the Hicks Avenue property which I made to Barbara D. Stevens in January, 1953; I received \$5,300.00, either seventeen or seventy-five, something like that—\$5,300.00 and some-odd dollars; I already have testified that I paid to Mr. A. J. De Smet, or had

paid out of the escrow, \$10,500.00; the difference between that and these two sums I mentioned of the \$16,000.00, I deposited in my account in the bank and used it in my business, that is my \$5,375.90; as regards certain expenses in connection with the sale, there was a title bond, I recollect; the amounts, whatever the title charge was for the title insurance and that sort of thing was taken from it—revenue stamps; the sale price was \$16,000.00; demand of A. J. De Smet, \$10,500.00; recording Deed and Reconveyance, \$4.00; title fee, \$99.00; Revenue stamps, \$17.60; trustee fee, \$3.50; balance due, \$5,000.00 of which I deposited in my account—my business account; I didn't have any other accounts; the \$375.90 I took for expense money to live on.

(At this point a document, headed "San Jose Abstract & Title Insurance Co.," was admitted in evidence as Bankrupt's Exhibit No. 1.)

I had had the 1948 Cadillac on the lot approximately a year and a half; it was floored with the American Trust Company on the regular flooring plan—trust receipt and \$1,050.00 was due under that, or thereabouts, maybe forty-six or forty-seven; the bank had been urging me or they had been attempting to collect this flooring on this; it was out of the ordinary to carry a car that long and they were making a demand on me to reduce my flooring at the time on that; the value of the automobile constantly was depreciating every month, as shown by the book; over this period I had attempted to sell it, then I sold it to Mrs. Scott; with regard to the

fair value of that automobile, it was much better than I received from later models that I sold under duress.

I did not furnish or transfer or place at the disposal of Barbara Stevens any part of that \$16,000.00 which she paid for the Hicks Avenue property; I did not place at the disposal of, give, or lend credit, in any way to Mrs. Scott, with any part of the \$1,098.00 which was paid for the 1948 Cadillac automobile; the major portion of that was given to the bank; I had not given her any portion of the amount she paid for that.

Mrs. Smith gave me the 1941 Buick to sell for her and I, in turn, sold the automobile, took a trade in, sold the trade in; the final disposition of the automobile was \$615.00, which we set up on my books a credit to Mrs. Smith; in discussing it, I told Mrs. Smith what we had received for the automobile; sometime late in the year, I gave Mrs. Smith a check for sixty some-odd dollars as ten per cent interest on this amount of money which she received, and it continued on my books as a credit to Mrs. Smith, which I used in my business; at no time did I pay Mrs. Smith any of the principal of this amount received for this automobile; some time during 1952 I, at various times, discussed it with Mrs. Smith when no one beside us was present and, at one time Mrs. Smith said that she did not need the money at that time and would just as well have the interest on it; I paid her a check for one year's interest at ten per cent.

Questioned by counsel for the objecting creditor, on redirect examination, the bankrupt testified:

About January 26, when I executed the Deed to Mrs. Stevens in the office of my attorney, Mr. Wool, in her presence, I did not come to any agreement regarding the retention of any interest in the property—if she should sell it that I would get any money back; there was no understanding when she was to resell it.

With regard as to how I arrived at the consideration of \$16,000.00, I discussed it with Jeffries, a real estate man down there, and, upon the Real Estate Board's appraisal during the probate of the estate, the property was valued at something around \$14,000.00 at that time by them and I thought \$16,000.00 would be a fair price; I did not enter into any agreement with Mrs. Stevens to the effect that I would still manage the property for her, help her sell it, anything like that; I continued to live in the house after I sold it to her; I remained in possession one day; I moved to 2015 Ray Drive when I returned from being married; the following day after executing the deed at my attorney's office, I took off for Reno and married Mrs. Stevens and afterwards I returned to Ray Drive; on occasions I went back to the San Jose home; I had personal things I had to get out; I had all my household furniture and equipment there; other than several times when we stayed there or I happened to stay in San Jose overnight for some particular reason, that I stayed there, the house was empty from January 14, when I married Mrs. Stevens, until it

was sold to the Johnsons; I cannot say offhand whether I ever told my friends or associates that I had sold the house to my wife; I know James Wayne, a broker in San Jose; I never rented the house after I sold it; I don't know who paid the taxes in April of 1953; I could have.

The matter having been submitted on briefs, at the conclusion of the aforesaid hearing, and the briefs having been read and considered the following herein complained of "Order, Judgment and Decree Sustaining Opposition to Bankrupt's Discharge in Bankruptcy and Order Denying Such Discharge" was signed by the undersigned referee in bankruptcy and filed in the above-entitled bankruptcy proceeding:

"Whereas, Peter Cottrell Scott heretofore was adjudged a bankrupt, by the above-entitled court, in the above-entitled matter, upon a petition filed, in said court, by said Peter Cottrell Scott, on December 18, 1953, and

"Whereas, on June 15, 1954, Norma Smith filed, in the above-entitled matter, her verified 'Specification of Objections to Discharge,' opposing the discharge in bankruptcy of the aforesaid bankrupt, in which said specification of objections, said objector averred that she, as a creditor of said bankrupt, was opposed to the granting, to said bankrupt, of a discharge of his debts, on the following grounds:

"1. (a) On or about January 12, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bank-

ruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: A house and lot known as 1520 Hicks Avenue, San Jose, California, with intent to hinder, delay and defraud his creditors.

“(b) On or about July, 1953, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the bankrupt transferred to his wife, Barbara Stevens Scott, certain of his property, to wit: A 1952 Cadillac automobile with intent to hinder, delay and defraud his creditors.

“2. On or about February 1, 1945, the bankrupt obtained money, to wit: \$5,000.00 from Norma Smith, the objector herein, by publishing or causing to be made or published a materially false statement in writing respecting his financial condition, to wit: That in order to obtain the said loan of \$5,000.00 he falsely stated in writing that said loan was secured by a deed of trust of even date with note whereas he knew at all times that said loan was to be unsecured and that the lender, Norma Smith, relied and believed in said representation in advancing said \$5,000.00.

“3. On or about January, 1951, the bankrupt, as the agent of Norma Smith, the objector herein, sold for her account her Buick automobile and although he recovered \$615.00 from said sale failed to account or pay the same over to her or satisfactorily explain the said loss,’ and

“Whereas, a hearing was held upon the aforesaid specification of objections to the bankrupt’s dis-

charge in bankruptcy, before the undersigned referee in bankruptcy, on July 27, 1954, after due notice to the directly interested parties, during the course of which said hearing both the objector and the bankrupt were sworn and gave testimony, under oath, and

“Whereas, under all of the circumstances and the facts shown by the evidence then offered and received, the undersigned referee in bankruptcy could not, and does not believe that the account given by the bankrupt, under oath, relative to the manner in which the words, ‘This note is secured by a Deed of Trust bearing even date herewith,’ were made to appear upon the original promissory note (offered and received in evidence during the aforesaid hearing) was, or is, a true, or correct, account of the manner in which said last mentioned words were made so to appear on said promissory note, but does believe, and so finds, that said bankrupt, by said last mentioned words, induced said *Norma Scott* to rely on the truth and correctness thereof and that she, so relying, made the aforesaid loan in the belief that said loan was to be, and was, secured by a deed of trust, as on said promissory note stated, and

“Whereas, the undersigned referee in bankruptcy finds, that the allegations set forth in Paragraph 2 of the aforesaid ‘Specification of Objections,’ are true and correct, and

“Whereas, upon the record, as it now stands, the undersigned referee in bankruptcy does not feel in a position to find, with any degree of certainty and

in fairness to each of the directly interested parties, whether, or not, the allegations set forth in paragraph 1.(a) and/or (b) of said 'Specification of Objections to Discharge' are true or correct, or otherwise, and

"Whereas, upon the record, as it now stands, the undersigned referee in bankruptcy does not feel in a position to find, with any degree of certainty, and in fairness to each of the directly interested parties, whether or not, the bankrupt has 'failed to account * * * or satisfactorily explain the loss' of the sum of \$615.00, or any part thereof, as averred in Paragraph 3 of said 'Specification of Objections to Discharge' and

"Whereas, the undersigned referee in bankruptcy concludes, as matters of law:

"(1) That the opposition to the bankrupt's discharge in bankruptcy herein should be sustained on the ground specified in Paragraph 2 of the afore-said 'Specification of Objections to Discharge';

"(2) That Peter Cottrell Scott should be denied his discharge in bankruptcy herein for the last mentioned reason;

"(3) That nothing herein contained, or set forth, in anywise, should be construed so as to preclude, or prevent, said Norma Smith from pursuing, in some other forum, whatever right, or rights, she may be advised that legally, she may have, as regards the matters set forth in Paragraph 1(a) and/or (b) and/or also in Paragraph 3 of the afore-said 'Specification of Objections to Discharge,' so long as, in so pursuing such right, or rights (if any

right she may have), said Norma Smith does not interfere, in any way whatsoever, with any right, or rights, which, on the date of the filing of the initial petition in bankruptcy herein, passed from Peter Cottrell Scott, to the bankruptcy estate of said Peter Cottrell Scott.

“It, Therefore, Hereby Is Ordered, Adjudged and Decreed:

“1. That the opposition to said bankrupt’s discharge in bankruptcy herein should be, and is, Sustained on the ground specified in Paragraph 2 of the aforesaid ‘Specification of Objections to Discharge.’

“2. That based upon the record herein, and in the light of the specific findings of fact with regard to the allegations set forth in Paragraph 2 of the aforesaid ‘Specification of Objections to Discharge,’ and pursuant to, and in compliance with, Paragraph (2) of the hereinbefore set forth conclusions of law, the discharge in bankruptcy herein of Peter Cottrell Scott be, and said discharge is, Denied.

“3. That nothing herein contained is intended to be, nor is it to be, construed, that said Norma Smith, in any way whatsoever, is precluded, or prevented, from pursuing, in some other forum, whatever right, or rights, she may be advised that, legally, she may have, as regards the matters set forth in Paragraph 1(a) and/or (b) and/or in Paragraph 3 of the aforesaid ‘Specification of Objections to Discharge,’ so long as, in so pursuing such right, or rights (if any right she may have), said Norma Smith does not interfere, in any way whatsoever, with any right, or rights, which, on the

date of the filing of the initial petition in bankruptcy herein, passed from Peter Cottrell Scott, to the bankruptcy estate of said Peter Cottrell Scott.

“Dated: September 21st, 1954.

“BURTON J. WYMAN,

“Referee in Bankruptcy.”

In due time the petition for review copied into the beginning of this certificate and report was filed with said undersigned referee in bankruptcy.

Papers Handed Up Herewith

The papers which are handed up herewith, as parts of this certificate and report, are as follows:

1. Petition for Review of Referee's Order by Judge.
2. Specification of Objections to Discharge.
3. Reporter's Transcript of Hearing of July 27, 1954, Relative to Opposition to Discharge of Bankrupt.
4. Opening Brief of Objecting Creditor Norma Smith to Discharge of Bankrupt.
5. Reply Brief of Peter Cottrell Scott.
6. Reply Brief of Objecting Creditor Norma Smith.
7. Envelope Containing Exhibits.

Dated: January 13, 1955.

Respectfully submitted,

/s/ BURTON J. WYMAN,

Referee in Bankruptcy.

[Endorsed]: Filed January 13, 1955, U.S.D.C.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 42377—In Bankruptcy

In the Matter of:

PETER COTTRELL SCOTT,

Bankrupt.

ORDER

The Order, Judgment and Decree of the Referee in Bankruptcy in the above-entitled action, dated September 21, 1954, is hereby affirmed.

The findings of fact made by the Referee in Bankruptcy in his order of September 21, 1954, are hereby approved and adopted by this Court as its findings of fact.

The statement of the bankrupt that his note was secured by a deed of trust amounted to a representation that he owned certain real property and that this property was of sufficient value to and did secure the note. This was a materially false statement and certainly was one respecting his financial condition.

Dated: May 10, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed May 11, 1955, U.S.D.C.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Peter Cottrell Scott, the bankrupt above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the order entered in the office of the Clerk of this Court on the eleventh day of May, affirming the order of the Referee sustaining Petitioner's opposition to Bankrupt's Discharge in Bankruptcy and denying such discharge.

Dated: June 8, 1955.

/s/ DONALD B. RICHARDSON, JR.,
Attorney for the Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 8, 1955, U.S.D.C.

In the Southern Division of the United States District Court for the Northern District of California

No. 42377

Before: Honorable Burton J. Wyman, Referee in Bankruptcy.

In the Matter of:

PETER COTTRELL SCOTT,

Bankrupt.

Tuesday, July 27, 1954—10:00 A.M.

OPPOSITION TO DISCHARGE
OF BANKRUPT

Appearances:

For Objecting Creditor:

E. P. RAZETO, ESQ.

For Trustee:

FRANCIS P. WALSH, ESQ.

For Bankrupt:

FRED A. WOOL, ESQ.

The Referee: Are you ready to proceed in the matter of Peter Cottrell Scott?

Mr. Razeto: Ready, your Honor.

Mr. Walsh: Ready for the bankrupt.

The Referee: Call your first witness.

Mr. Razeto: I am appearing in association with Mr. Liston O. Allen, representing the objecting creditor.

Mr. Wool: Fred A. Wool, appearing for the bankrupt.

The Referee: Mr. Walsh represents the trustee. You may proceed, Counsel.

Mr. Razeto: May we have a stipulation at this time, your Honor, that any witnesses be excluded from the courtroom?

The Referee: Everyone but the parties interested?

Mr. Razeto: Yes, naturally, the parties.

The Referee: Are there any witnesses other than the parties interested?

Mr. Wool: Yes; I have two witnesses.

Mr. Razeto: May we also have a stipulation, Counsel, that Peter C. Scott filed a petition in bankruptcy on December 18, 1953, and was adjudicated bankrupt on December 18, 1953?

The Referee: The record is here, Counsel. The Court will take judicial notice of all the records.

Mr. Razeto: Mrs. Smith.

MRS. NORMA H. SMITH

called as a witness for objecting creditor, Sworn.

The Referee: What is your full name? [2*]

A. Norma H. Smith.

The Referee: Proceed.

Direct Examination

Mr. Razeto: If the Court please, I am now presenting testimony under the specifications of objection to the discharge Ground Two.

Mr. Wool: Which one? You filed two.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Mrs. Norma H. Smith.)

Mr. Razeto: No. 2 of our objections.

Mr. Wool: But, you filed two sets of objections.

Mr. Razeto: The last set, the one that was mailed to you on June 14, 1954.

Mr. Wool: I take it you are abandoning the earlier one of the 11th.

Mr. Razeto: That was never filed.

The Referee: We have only one here.

Mr. Razeto: June 14.

The Referee: Filed June 15 here.

Mr. Razeto: That is the one we are proceeding under.

Mr. Wool: I never was advised of it.

Mr. Razeto: You received a copy of this?

Mr. Wool: Yes.

Mr. Razeto: I also want to know for the record: There are no written responses?

The Referee: It is not required.

Mr. Wool: Under the Act, it does not require a written answer. [3]

Q. (By Mr. Razeto): You are Norma Smith, are you not? A. Yes.

Q. And where do you now reside?

A. 1464 Crow Canyon Road, Hayward.

Q. Mrs. Smith, I show you a note dated February 1st.

Mr. Wool: May I see that, counsel?

Mr. Razeto: Surely.

Q. I show you a note for \$5,000.00. Is that the signature of Mr. Peter C. Scott?

(Testimony of Mrs. Norma H. Smith.)

A. Yes, sir; it is.

Q. And is that note payable to you?

A. Yes, sir.

Mr. Razeto: I introduce this note into evidence and would like to read it into the record, for the record in this case.

The Referee: Objecting Creditor's Exhibit No. 1.

(The note, dated February 1, 1945, was admitted in evidence as Objecting Creditor's Exhibit No. 1.)

Mr. Razeto: May we have permission to withdraw it after I read it into the record?

The Referee: Not until after the time for appeal goes by.

Mr. Razeto (Reading): "San Jose, California, February 1st, 1945."

Mr. Wool: Why can't it go in and be deemed read?

Mr. Razeto: I want the record, for the purpose of any appeal, to be complete. [4]

"This flat note hereinafter stated we jointly and severally promise to pay to Norma Smith as joint tenants or order the principal sum of (\$5,000.00) Five Thousand Dollars with interest from date hereof on the amounts of principal sum remaining from time to time unpaid until said principal sum is paid, at the date of (4½%) Four and one-half per cent per annum. Interest payable semi-annually on February 5th and August 5th of each year and

(Testimony of Mrs. Norma H. Smith.)

continuing for a period of (10) ten years. Providing, however, that the whole of the principal sum remaining unpaid shall be paid in full on or before (10) ten years after date. Any or all of the principal sum may be paid at any time during the period of this note without penalty.

“This note is secured by a Deed of Trust bearing even date herewith.”

It is signed, “Peter C. Scott” and “Elizabeth A. Scott.”

Q. Mrs. Smith, did you give to Peter C. Scott and Elizabeth A. Scott \$5,000.00 for this note?

A. Yes, I did.

Q. Mrs. Smith, did you ever receive a Deed of Trust securing this note? A. No, I did not.

Q. Do you know whether there is in existence a Deed of Trust securing this note?

A. Mr. Scott told me there was not. [5]

Q. When was the first time Mr. Scott informed you that his note was not secured by a Deed of Trust? A. October, 1953.

Q. Will you relate the circumstances when he first informed you of that fact?

A. I had gone to San Jose and met Mr. Buckhalter, who has since passed away.

Mr. Wool: Just a minute. I object. Maybe I am anticipating testimony. I was going to object to any discussion with anybody else than Mr. Scott.

Mr. Razeto: So far she just testified she met——

The Referee: There is nothing pending.

Q. (By Mr. Razeto): Proceed.

(Testimony of Mrs. Norma H. Smith.)

A. We met Mr. Scott.

Q. Who do you mean by we?

A. Mr. Buckhalter and I.

Q. The three of you. Is that right?

A. Yes.

Q. Where did you meet Mr. Scott?

A. In front of Cathey Motors in San Jose, on South First Street.

Q. And what was the conversation between you and Mr. Scott in the presence of Mr. Buckhalter?

A. I told him I heard he sold his house. I asked him if that was true and I asked him about the Deed of Trust. Then, he told us in that conversation there had been no Deed of Trust given at any time. He said the money was in escrow and would be paid in about a week's time and he would pay me then, he wanted to pay it in full at that time. That was the first I [6] had known there was no Deed of Trust.

Q. Did he, at that time, assure you you would be paid out of an escrow? A. Yes; he did.

Mr. Wool: Just a minute. Counsel is asking leading and suggestive questions.

The Referee: That is true.

Mr. Razeto: I am repeating her testimony, your Honor, that he said she would be paid out of the escrow. I am just repeating her answer. I am not suggesting.

The Referee: I have not said you were.

Q. (By Mr. Razeto): Mrs. Smith, did he tell you where the escrow was?

(Testimony of Mrs. Norma H. Smith.)

A. I think he said The California Pacific Title. Afterwards, Mr. Buckhalter told me.

Mr. Razeto: Not what Mr. Buckhalter said.

The Referee: Was Mr. Scott there?

A. The three of us.

Q. When he told you about the escrow?

A. Yes; we were all present, all sitting in Mr. Scott's car at that time.

The Referee: If he was present, she can answer.

Q. (By Mr. Razeto): Did you ever receive any money from this escrow? A. No; I did not.

Q. Have you ever been paid on this note?

A. No; I have not. [7]

Mr. Razeto: May I have the schedules, your Honor? You are familiar with this?

Mr. Wool: Yes.

Q. (By Mr. Razeto): Mrs. Smith, I show you the creditors' schedule filed on December 18, 1953, Schedule A-3, entitled "Creditors Whose Claims Are Unsecured." The third item is: Norma Smith, 1464 Crow Canyon Road, R.F.D. Hayward, California; Note \$10,615.00. That is signed by Peter C. Scott. Now, does that include the \$5,000.00 note that is dated February 1, 1945? A. Yes, sir.

Q. Mrs. Smith, going back now to February 1st, 1945, when this note was executed by Mr. Scott and given you in exchange for the \$5,000.00, from whom did you receive this note?

A. From Mr. Scott.

Q. Who prepared it? Do you know?

(Testimony of Mrs. Norma H. Smith.)

A. I don't know who prepared it. I presume Mr. Scott. The note there is the way it came to me.

Q. Handed to you by Mr. Scott?

A. Handed to me by Mr. Scott.

Mr. Wool: Did you say Mr. or Mrs. Scott?

A. Mr. Scott.

The Referee: Mr. Scott.

Q. (By Mr. Razeto): Mrs. Smith, prior to the lending to Mr. Scott of the \$5,000.00 in question, had he discussed the matter of security and a Deed of Trust with you?

Mr. Wool: Just a minute now. That is leading and [8] suggestive.

Mr. Razeto: I don't know, your Honor.

The Referee: Ask her if there was any conversation at the time he gave the note.

Q. (By Mr. Razeto): Was there any conversation?
A. It was understood——

Q. No, no. What conversation? What did he say to you about the note?

A. It would be secured by a Deed of Trust.

Q. What property?

A. A mortgage on the house, 1520 Hicks Avenue, San Jose.

Q. Did he give you any details or particulars as to why he wanted the money from you?

A. In the conversation, he said that they were refinancing their home and that I might as well have the interest as paying the bank or someone else. I don't remember exactly just what it was.

(Testimony of Mrs. Norma H. Smith.)

Q. What was your relationship to Mr. and Mrs. Scott at that time, February 1, 1945?

A. Very, very close; about the closest friends I had.

Q. At that time were you married or a widow?

A. A widow.

Q. Has he ever made any payment of interest under the note to you? A. Yes.

Q. How many payments were made?

A. Payments of interest were made twice a year up until—I think the last one was in 1952. I don't remember just exactly. [9]

Q. During this period, or at any time when he made payments to you, did he tell you the note was not secured by a Deed of Trust?

A. No; he did not.

Q. Would you have loaned him this money if you knew it had not been secured by a Deed of Trust?

A. No; I would not have, at that particular time.

Q. Did you believe him when he told you it was secured by a Deed of Trust?

A. Yes; I did. I had no reason to believe otherwise.

Q. Mrs. Smith, when Mr. Scott supposedly sold his home to his present wife on February 13, 1953—

Mr. Wool: Now, just a moment. I am going to object to that question for two reasons: It assumes

(Testimony of Mrs. Norma H. Smith.)

a fact not in evidence and it also carries with it an innuendo which certainly is objectionable.

Mr. Razeto: I will withdraw the question, your Honor.

The Referee: Very well.

Q. (By Mr. Razeto): Mrs. Smith, did Mr. Scott at any time in January, 1953, inform you that he had sold or transferred the house?

A. No; he did not.

Q. Did he pay you any money at that time?

A. No; he did not.

Q. Calling your attention to some time in August, 1953, did you have any conversations with Mr. Scott regarding your loan? [10]

A. Yes; I did. I went to San Jose just before I went on vacation, the last of the month. I asked him to put the two notes on my mortgage on the house. He said he would look it up; he did not know whether the papers were at the house or the bank. He would take care of it.

Q. He did not tell you at that time that it was not secured by a Deed of Trust?

A. No; he did not; nor that the house had been sold.

Mr. Razeto: That is all at this time.

The Referee: Cross-examine?

Mr. Wool: Are you proceeding on the other specification?

Mr. Razeto: I will recall her.

Mr. Wool: At this moment, at this time, I move to strike out all the testimony on Point No. 2 on these specifications for the following reasons:

(Testimony of Mrs. Norma H. Smith.)

In the first place, in order to be sufficient to bar a discharge, the statement must be in writing and it must be a statement, a financial statement, citing in *re Morgan*, 267 Fed. 959, quoting an extract from that:

“Such statement must be a financial statement as distinguished from a mere representation.”

Then, in *re Lundberg*, 272 Fed. 107, the Court says—in that case there was a note given to the effect, reciting that there was a lien on certain real property. The court in that case said: [11]

“But there is a grave question as to whether the statement written on the note, even if false, came within the statute.”

The Circuit Court of Appeals in the Second Circuit recently said—it is plain that the intention of Congress was not to extend the statute to all cases of false written statements where credit happens to be given, the thought being to confine the statute to cases where the decision to give credit was induced by the false statement—“Such statement must be a financial statement as distinguished from a mere misrepresentation.”

In *re Current*, 63 Fed. 2nd, 640. The lower court sustained the objections in a similar situation as did also the District Court. On appeal, the Circuit Court granted the discharge. The section reads, “A materially false statement in writing respecting his financial condition.” This subsection was amended May 27, 1926, and, among other changes, the words were added: “Respecting his financial

(Testimony of Mrs. Norma H. Smith.)

condition.” Thus, he obtained credit by making a materially false statement in writing when he presented to the loaner a forged promissory note. The Court said: “Was it, however, with respect to his financial condition”——

“The presentation of a note apparently signed by a responsible third party would, we think, hardly be in reference to the bankrupt’s financial condition, as that phrase is here used. It is a representation that [12] the bankrupt enjoys the backing of a responsible party, which fact indicates the existence of credit. However, the phrase ‘respecting his financial condition’ limits and restricts the false statement which may defeat the discharge. In short, the false statement must be in respect to the bankrupt’s financial condition. Even before the amendment to this subdivision, the Courts had given the term ‘materially false statement’ a narrow meaning. (Citing cases.)

“Moreover, Subdivision (2) of this Section (Section 14b, of the Act, 11 USCA, Sec. 32 (b) (2)) used the same phrase, ‘financial condition,’ in such a way as to leave no room for doubt as to its meaning.”

This is a 14 Federal Supplement case.

And, in re Hudson, 262 Fed. 778—these are District Court cases, however——

Mr. Razeto: May I present my points and authorities on the same subject, your Honor?

The Referee: Wait until he gets through.

(Testimony of Mrs. Norma H. Smith.)

Mr. Razeto: Sorry. I thought he was finished. Sorry.

Mr. Wool: In *Levy vs. Industrial Finance Corporation*, 276 U. S., 281, Judge Holmes said: "The amendment of 1926 adding the words 'respecting his financial condition' serves to limit this bar to a discharge more narrowly."

Then, in *re Hudson*, 262 Fed. 778, the one I [13] just quoted—this is a District Court case—the Court held there that the statute was never intended by Congress to bar a discharge upon the sort of written misrepresentation which is presented here. Congress intended the language of the statute to be construed as a merchant uses the term. The Court said: "A loan upon given security is not ordinarily contemplated when merchants speak of obtaining money, goods, or property on credit."

The statute contemplates a statement of the bankrupt's financial condition.

6 Am. Jurisprudence, 968, Sec. 701 of the title on bankruptcy:

"The statement to be a bar must be a statement in writing with respect to the financial condition."

I submit, therefore, that the testimony should be stricken.

Mr. Razeto: If the Court pleases, we submit the following points and authorities in support of our position. What we are relying on is Section 14(c) of the Bankruptcy Act, which reads as follows:

"The court shall grant the discharge unless satisfied that the bankrupt has—(3) obtained money

(Testimony of Mrs. Norma H. Smith.)

or property on credit, or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a [14] materially false statement in writing respecting his financial condition.”

This section has come under interpretation by innumerable cases and the nearest case to the one before the Court, and I believe the complete answer to this case, is a case not cited by Counsel, in *re Powell*, 22 Fed. 2nd, 239. In that case, your Honor, the bankrupt obtained money by means of a false chattel mortgage. There was no chattel mortgage actually existing, but he represented in writing to the creditor that there was a chattel mortgage. The Court held that was a materially false statement in writing sufficient to bar the discharge, that a false chattel mortgage, being in writing, fell within the definition, just as does a false statement of assets generally. Bad check cases were distinguished. The forgery case which Counsel cited was distinguished. It was held that a check was not a statement, did not say anything about finances, and that same case, in *re Powell*, overrules the case cited by Counsel, in *re Hudson*. The prior case—I have that also—that was in *re Hudson*, 262 Fed. 778, has been overruled specifically by in *re Powell* in so many words.

Also, the later interpretations of the application of this section dealing with obtaining money by false representations in writing of the financial condition of the bankrupt has been stated to be as follows:

(Testimony of Mrs. Norma H. Smith.)

“A materially false statement in writing barring a bankrupt’s discharge cannot be confined [15] to a financial statement, but may include a statement for the purpose of obtaining money or property on credit.”

Robinson vs. Williston, 266 Fed. 970.

Mr. Wool: What is the type of case? What was before the Court?

Mr. Razeto: That was a worthless check case, your Honor. Yes; that was a worthless check case, your Honor.

The Referee: Wait a minute. A worthless check case in what kind of case?

Mr. Razeto: I have it now. This Robinson case has an interesting history. It was a worthless check case. Originally the lower court held that a check made without any funds was sufficient to bar the discharge. That case was reversed on appeal, and in that case it held that a worthless check was not a statement in writing, and, therefore, overruled the lower court. It was in the last court where the statement I have read was made. The Appellate Court agreed with counsel for the objector that a false statement was not confined to a financial statement as commonly understood, of assets and liabilities, but may include any statement as to the financial condition of the bankrupt. And that case was further carried through in *in re Powell*. By the way, this case established that bad checks are not grounds for barring the discharge, which was stated in the *in re Powell* case. [16]

(Testimony of Mrs. Norma H. Smith.)

Another case similar to ours is the case of *Mau vs. Sampsell*, 185 Fed. (2nd) 400. In that case the debtor wrote a letter, the bankrupt-debtor wrote a letter stating that an existing escrow would soon net him enough cash to pay the debt in full. It later developed there never was in existence any escrow at all; the escrow was not there whatsoever. They held that was sufficient ground for denying the debtor a discharge.

In view, your Honor, of these two late cases——

The Referee: There is a direct reference to his financial condition.

Mr. Razeto: The existence of an escrow.

The Referee: It is not the existence of an escrow. The man says there is an escrow out of which there will be sufficient to pay the creditor all this money.

Mr. Razeto: When a man says it is secured by a Deed of Trust, it implies there is a source from which it can be paid, too, your Honor.

The Referee: I cannot imply something. There is a direct statement respecting the man's financial condition. This does not.

Mr. Razeto: The chattel mortgage case does, does it not?

The Referee: I have not read that case.

Mr. Wool: I expect there is a statement that there was a mortgage on the man's home. [17]

Mr. Razeto: The Deed of Trust was.

Mr. Wool: That is the difference; there is no Deed of Trust.

(Testimony of Mrs. Norma H. Smith.)

Mr. Razeto: That is the reason we are here. Anyway, we submit these as our authorities.

The Referee: Very well. I will reserve my ruling. Proceed with your case in chief. You can cross-examine without waiving any rights.

Mr. Wool: I certainly missed this in re Powell case or I would certainly have read it and presented it to your Honor. I had to present all the applicable law whether it is for me or against me. I think these others don't apply.

Cross-Examination

By Mr. Wool:

Q. How did you pay Mr. Scott this money, Mrs. Smith? The \$5,000.00. A. By a check.

Q. And when did you give the check to him, do you recall?

A. No; I don't recall. It was 1945, some time in February, 1945.

Q. And when did you get the note?

A. Just about the same time.

Q. Was it before or after you gave him the check? A. After I gave him the check.

Q. You got the note after you gave the check?

A. That is right.

Q. How long after?

A. That, I don't remember. [18]

Q. And now I give you this pencil; now, you take the pencil; now give it back. Was it that kind of a transaction? A. No.

Q. Or, did some days elapse?

(Testimony of Mrs. Norma H. Smith.)

A. I think several days elapsed.

Q. And where was the note given to you?

A. In San Jose.

Q. You were down visiting the Scotts at that time? A. Yes.

Q. Where was the check given to Mr. Scott?

A. Also in San Jose.

Q. Now, I believe that you said you received the note from Mr. Scott? A. Yes.

Q. Mr. Scott gave you the note?

A. Yes; I believe so.

Q. Now, did you give Mr. or Mrs. Scott the check?

A. They were both there. I don't remember. I took it down on a week end and gave it to them. They were both there at the same time.

Q. That was in 1945? A. Yes.

Q. Now, I believe you testified here earlier at this hearing that you were, that you visited back and forth with the Scotts? A. That is right.

Q. For a number of years? A. Yes.

Q. Now, is Mrs. Elizabeth Scott living or dead?

A. Not living, sir.

Q. Do you know when she died?

A. January, 1952.

Q. And you visited with the Scotts?

A. Yes. [19]

Q. They would visit you and you visited them?

A. Yes.

Q. And was the note ever discussed at any time of these meetings from 1945 to some time in 1952?

(Testimony of Mrs. Norma H. Smith.)

A. No.

Q. It was never discussed? Do you know, of your own knowledge, in what business Mr. Scott was engaged at that time?

A. The used car business.

Q. How frequently would you see the Scotts?

A. I sometimes would be down twice a week. Mrs. Scott was teaching at the University. I used to go down week ends. When she was teaching during summer school, she would stay with us in Alameda.

Q. Following, that is, immediately following Mrs. Scott's death, did you discuss with Mr. Scott anything about his financial affairs? A. No.

Q. Even though he was owing you money?

A. No; I did not discuss anything.

Q. You did not discuss——

Mr. Razeto: Let her finish.

A. I did not think it was necessary. I had a mortgage on the house, so I thought—the interest was paid, so, I had no occasion to.

Q. (By Mr. Wool): You did not inquire?

A. No. I did not think it necessary.

Mr. Wool: That is all. [20]

Redirect Examination

By Mr. Razeto:

Q. Prior to the lending of the money to Mr. Scott, had you been told the note was secured by a Deed of Trust, had you not? A. Yes.

Q. Did he give you a note reading——

(Testimony of Mrs. Norma H. Smith.)

Mr. Wool: I object to that. It is certainly objectionable. It is incompetent, irrelevant and immaterial; certainly not a representation as contemplated by the statute barring a discharge.

Mr. Razeto: Your Honor, I was asking on redirect as to what was said between Mr. Scott and Mrs. Smith at the time the money was loaned and what actually took place. I think it is a perfectly proper question and very material to the decision.

The Referee: Just a minute. Haven't you already presented that?

Mr. Razeto: Just in order to correct any misinterpretation of any other statement made here. That is all.

(Witness excused.)

Mr. Razeto: Mr. Scott.

PETER COTTRELL SCOTT

called as a witness for the Objecting Creditor,
Sworn.

The Referee: Your name is Peter Cottrell Scott?

A. Yes, sir. [21]

Direct Examination

By Mr. Razeto:

Q. Mr. Scott, where do you reside now?

A. 2015 Ray Drive, Burlingame, California.

Q. Mr. Scott, did you own, on February 1st, 1945, a house at 1520 Hicks Avenue, San Jose?

A. Yes.

(Testimony of Peter Cottrell Scott.)

Mr. Wool: What was the date?

Mr. Razeto: About February 1st, 1945.

The Witness: Yes, sir.

Q. (By Mr. Razeto): And at that time that house had a mortgage against it. Is that right?

A. Yes, sir.

Q. In whose name was the mortgage then?

A. A. J. De Smet.

Q. And what was the balance due at that time to De Smet?

A. I am not positive, but approximately \$6,000.00.

Q. And their Deed of Trust was reconveyed to you on March 24, 1945. Isn't that true?

A. Somewhere in there.

Q. And after that reconveyance on March 24, 1945, did you again encumber this house?

A. At a later date, yes, sir.

Q. Did you give at that time to Mrs. Smith a Deed of Trust on the house? A. Yes, sir.

Q. Did you give Mrs. Smith——

Mr. Wool: Just a minute, Counsel.

The Witness: I misunderstood you. I thought you said De Smet. [22]

Q. (By Mr. Razeto): No. Did you give to Mrs. Smith on or about March, 1945. when you paid off the De Smets, a Deed of Trust in her name?

Mr. Wool: Just a minute. I am going to object to that as incompetent, irrelevant and immaterial. This is something that occurred following the execution of this note, the execution and delivery of the

(Testimony of Peter Cottrell Scott.)

note, and certainly not material as to the question of any kind of a statement which would bar the discharge of this bankrupt.

Mr. Razeto: The question, your Honor, is whether he gave a Deed of Trust or did not give a Deed of Trust to Mrs. Smith.

The Referee: That was not the question you asked him.

Mr. Razeto: I asked if he gave a Deed of Trust to Mrs. Smith in March, 1945, on the house on Hicks Avenue, San Jose.

Mr. Wool: It is immaterial.

The Referee: The note is dated February 1st.

Mr. Razeto: At that time, he testified he removed the old mortgage. I was wondering if at that time he gave a Deed of Trust.

The Referee: The objection is sustained.

Mr. Razeto: All right.

Q. Mr. Scott, on about February 1st, 1945, when Mrs. Smith loaned you the \$5,000.00, was your house on Hicks Avenue [23] encumbered? A. Yes.

Q. By whom? A. A. J. De Smet.

Q. How long were they the persons who held the Deed of Trust on your house? How long a period after that did they remain on the house as holders of the Deed of Trust?

Mr. Wool: The same objection.

The Referee: The same ruling.

Mr. Razeto: I want to show, your Honor, that this house was always encumbered and he was giv-

(Testimony of Peter Cottrell Scott.)

ing a note in writing that it was encumbered by someone else.

Mr. Wool: There was no representation that it was to be a First Deed of Trust.

Mr. Razeto: That answers the whole question, your Honor.

The Referee: If it was after this date, what difference would it make?

Mr. Razeto: He could have corrected that by giving her the Deed of Trust.

The Referee: The objection is sustained. Everything must happen on or prior to this date if it is at all applicable.

Mr. Razeto: He states it is secured by a Deed of Trust of even date herewith.

Q. There was no Deed of Trust of even date herewith, was there, Mr. Scott? Will you answer that? When you wrote this note stating this is secured by a Deed of Trust of even date herewith, there was no Deed of Trust? [24] A. No.

Q. Why did you sign the note, then?

A. This note is a note that I copied from a note that I had in my possession; I mean, among some papers that I had, and it had this particular type of note on it and that is what I copied and later gave to Mrs. Smith.

Q. Mr. Scott, you typed this note yourself. Is that right? A. Yes, sir.

Q. From the first word to the last word. Is that right? A. That is right.

Q. You wrote it off and typed it, did you not?

(Testimony of Peter Cottrell Scott.)

A. I think so; yes.

Q. Did you understand what you had written, Mr. Scott? A. I believe I understood.

Q. Did you own any other property than the Hicks Avenue home, other real property than the Hicks Avenue home at the time the note was executed by you? A. Yes.

Q. What other property did you own at that time?

A. A lot adjacent to the Hicks Avenue property.

Q. Was that under a separate Deed or the same Deed as your Hicks Avenue property?

A. A separate Deed.

Q. Did you ever give Mrs. Smith a Deed of Trust on that lot? A. No.

Q. Was that lot also encumbered on February 1, 1945?

A. I am not positive. I purchased it and after due time, paid it, over a period of time. [25]

Q. Do you or do you not know whether you gave a Deed of Trust to Mrs. Smith on the adjacent lot?

A. I did not give Mrs. Smith a Deed of Trust at any time, Counsel.

Mr. Razeto: Thank you.

Now, if the Court please, referring to Specification No. 1(a) and (b) of our Specifications—

Q. I show you, Mr. Scott, a Deed for identification. Is that the deed signed by you?

The Referee: That is a photostatic copy.

(Testimony of Peter Cottrell Scott.)

Mr. Razeto: Pardon me. That is a photostatic copy of the Deed, yes, your Honor.

The Witness: Yes, sir. This is my signature.

Mr. Razeto: I would like to offer it in evidence.

Mr. Wool: On what?

Mr. Razeto: Under our Objection 1(a). It reads as follows——

Mr. Wool: I have no objection to its being offered in evidence and being read so long as it is confined to Specification 1 (a).

The Referee: Very well:

(Photo of Deed admitted in evidence as Obj.
Cred. Ex. No. 2.)

Mr. Razeto: It says:

“Application 263054, Escrow 854702. Grant Deed
Individual.

“I, Peter C. Scott, a single man, the First Party, hereby grant to Barbara D. Stevens, a single woman, the Second Party, all of the real [26] property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

“Lot Twenty (20) in Block Two (2) as laid down, designated and delineated upon that certain Map entitled ‘Map of Cherry Park’ recorded October 15, 1923, in the Office of the County Recorder of the County of Santa Clara, State of California, in Book R of Maps, Page 42.

“Witness my hand this 13th of January, 1953.

“PETER C. SCOTT.

(Testimony of Peter Cottrell Scott.)

“State of California,

“County of Alameda—ss.

“On this 13th day of January, 1953”——

Mr. Wool: Just a minute. I don’t have a Notary’s commission in Alameda County.

Mr. Razeto: May I proceed?

Mr. Wool: You may correct that to Santa Clara County. I am just correcting the record for you; that is all.

Mr. Razeto: Thank you, sir.

“State of California,

“County of Santa Clara—ss.

“On this 13th day of January, 1953, before me, Fred A. Wool, a Notary Public in and for said County and State, personally appeared Peter C. Scott, being the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

“FRED A. WOOL,

“Notary Public.” [27]

“FRED A. WOOL,

“Notary Public.”

This Deed of Trust——

Mr. Wool: Deed, Counsel.

Mr. Razeto: Excuse me. This Deed was recorded January 26, at 1:30 o’clock p.m., 1953 and bears revenue stamps of \$17.60.

Q. Is this the Deed of Trust——

Mr. Wool: Deed, Counsel.

Mr. Razeto: Pardon me.

(Testimony of Peter Cottrell Scott.)

Q. Is the Deed, Mr. Scott, by which you purportedly conveyed title to Barbara Stevens?

Mr. Wool: Just a moment. I object to that innuendo and conclusion.

Mr. Razeto: I am very sorry if you are sensitive about my question. If you have an objection, make a legal objection on some ground, not innuendo.

Mr. Wool: I am objecting to your innuendos, Counsel, "By which you purported to convey" and all that.

Mr. Razeto: It is our position, your Honor, that there was never a bona fide sale or transfer of this property to Barbara Stevens. Therefore, I am referring to it as an alleged transfer. You can have the pleasure of proving otherwise when I am through.

Mr. Wool: If you want to use the word "alleged," that is perfectly all right. [28]

Mr. Razeto: All right.

Q. By this Deed, you alleged, or tried to transfer your title to the Hicks Avenue property to Barbara Stevens. Is that right?

A. I did transfer it.

Q. That was on January 13, 1953, when you signed this Deed? A. That is right.

Q. Now, you married Barbara Stevens the next day, January 14. Is that true?

A. That is right.

Q. What arrangements did you make with her on January 13, regarding the value of this house, or the proceeds from this house?

(Testimony of Peter Cottrell Scott.)

Mr. Wool: I think that question is misleading and for that reason I am going to object to it.

The Referee: What do you mean by the proceeds of this house?

Mr. Wool: It is a multiple question and assumes facts not in evidence.

Mr. Razeto: Very well.

The Referee: Reframe the question, Counsel.

Mr. Razeto: Yes, I will.

Q. When you executed this Deed in the office of your attorney, Fred A. Wool, on January 13, 1953, was Mrs. Stevens with you at that time?

A. Yes, sir.

Q. Were the three of you, you, Mrs. Stevens and Mr. Wool there? [29] Is that right?

A. That is right.

Q. What was the price, the consideration for this house? A. \$16,000.00.

Q. And she was to pay \$16,000.00 in cash. Is that right? A. That is right.

Q. And this was deposited in escrow, is that right, the \$16,000.00? A. Yes.

Q. Did you at that time inform Mrs. Stevens or Mr. Wool that you had promised a Deed of Trust on this house to Mrs. Smith? A. No.

Q. Did you at that time give any instructions to the title company to pay out of the \$16,000.00, \$5,000.00 to Mrs. Smith? A. No.

Q. Who were paid from the proceeds of that \$16,000.00, do you know? A. Yes.

(Testimony of Peter Cottrell Scott.)

Q. Who? A. A. J. De Smet.

Mr. Wool: We have the title report.

Mr. Razeto: Let the witness answer.

A. A. J. De Smet.

Q. (By Mr. Razeto): In other words, you owed De Smet \$6,000.00 on one note and \$4,000.00 on another note and you paid that off from the proceeds from Mrs. Stevens. Is that right?

A. I paid \$10,500.00 to A. J. De Smet.

Q. And that went on record at the same time the Deed went on record, January 26, 1953, which was in the week after you [30] married Mrs. Stevens. Is that right? A. I assume that is right.

Q. Did you have any other creditors on January 13, 1953, other than Mrs. Smith? A. Yes.

Q. Were they paid at that time?

The Referee: What is the competency of that?

Mr. Razeto: He was insolvent at the time.

The Referee: \$16,000.00 was paid for this.

Mr. Razeto: Ten of which went to De Smet and \$5,500.00 only was surplus.

The Referee: It doesn't make any difference. The transfer is good, isn't it?

Mr. Razeto: I am not talking of the transfer, your Honor. I am showing that this man was insolvent when he transferred property within twelve months of the filing of the petition for discharge.

Mr. Wool: I think Counsel is mistaken on his law, because if the transfer is for a good and valuable consideration——

(Testimony of Peter Cottrell Scott.)

The Referee: Sure. Valuable consideration was paid here.

Mr. Razeto: May I cite some authorities to the Court?

The Referee: Hand them in later.

Mr. Razeto: I do have authorities to the effect that transfers of this kind, your Honor, where a man transfers [31] to his mother-in-law, the Court held it was not a fair consideration. I will show later——

The Referee: Can you show that the value of the place was much more than that?

Mr. Razeto: I will in a minute. Eight months later it was \$18,000.00.

The Referee: That would not make any difference eighteen months later.

Mr. Razeto: Eight months.

The Referee: Even one month.

Mr. Razeto: This woman——

The Referee: We cannot waste time. The transfer was good. I am going to so hold.

Mr. Razeto: I am going to introduce the last Deed from Barbara Stevens, then Barbara Scott, to the——

The Referee: I don't see what that has to do with this. He says he did not give her a Deed of Trust. Now, if you have anything, you have it there. If you have not, all this does not make a particle of difference.

Mr. Razeto: May we introduce this?

The Referee: Surely.

Mr. Razeto: I want the record complete on this.

(Testimony of Peter Cottrell Scott.)

The Referee: There is no objection to introducing it, but I am not going to listen to something at this time that you can put in afterwards by way of a brief if you want to. [32]

Mr. Razeto: This is a Grant Deed in Joint Tenancy. "Barbara B. Stevens does hereby grant——."

Mr. Wool: Just a moment. That has not been introduced and I am now objecting to the introduction of that.

The Referee: I cannot see the competency of it at all.

Mr. Razeto: I want to show, Your Honor, that within twelve months before the filing of the petition in bankruptcy, two people deeded to each other and then transferred to third parties for about \$2,000.00 more.

The Referee: I would not care if it was \$10,000.00 at this time. It would not make any difference to me. You would have to show the value of that particular place at that time, that it was worth more. Even then, it is a difference of opinion.

Mr. Razeto: May I complete this, Your Honor?

The Referee: He is objecting to it and I am going to sustain the objection.

Mr. Razeto: May the record show that I am opposing the ruling of the Court?

Mr. Wool: We will so stipulate.

The Referee: You may take an exception.

Mr. Razeto: Under the Federal Rules, do I have to take an exception?

(Testimony of Peter Cottrell Scott.)

The Referee: You don't have to. Make an objection, I will rule on it, and then you can take whatever action you [33] want.

Mr. Razeto: I am going to Specification 1(b), the transfer of the automobile.

Q. Mr. Scott, within months prior to the filing of the petition in bankruptcy, to wit, in July, 1953, you owned a 1952 Cadillac. Is that right?

A. No, sir.

Q. What? A. No.

Q. Who owned it at that time?

A. I did not have a 1950 Cadillac.

Q. A 1952 Cadillac.

A. Or a 1952 Cadillac either.

Q. You testified in court——

Mr. Wool: Just a moment, Counsel. If you are going to examine the witness on any former testimony, read him the question and the answer.

Mr. Razeto: Very true.

The Referee: What are you trying to do, impeach your own witness?

Mr. Razeto: I am going to show he has testified that he owned a 1952 Cadillac in 1953.

The Referee: He is your witness, sir.

Mr. Razeto: Very well; we will impeach him.

The Referee: Well, you won't

Mr. Razeto: I want to find by the testimony today.

Q. What is your present testimony, that you did not own a 1953, a 1952 Cadillac? Is that right? [34] A. No.

(Testimony of Peter Cottrell Scott.)

Q. What Cadillac did you own in July, 1953?

A. A 1948 Cadillac, Sixty-two sedan.

Mr. Wool: Counsel, you are mistaken. That number they call the model for the year. That is typical of a lot of things done here.

Mr. Razeto: Of course, I am not an automobile salesman. I don't know.

Mr. Wool: Neither am I.

Q. (By Mr. Razeto): You have testified here, or we have testimony from you that you did own a 1952 Cadillac in 1953.

A. I did not testify that I owned a 1952.

Q. What type of automobile did you transfer to your wife in July, 1953?

A. A 1948 Cadillac, Model Sixty-two sedan.

Q. Model what? A. Sixty-two.

Q. You transferred that to Mrs. Scott in July, 1953? A. Right.

Q. And she still has that automobile, has she?

A. Yes.

Q. You are sure it is a 1948, not a 1953 Cadillac?

A. Yes, sir.

Q. And the consideration for the automobile was how much?

A. \$1,098.00, \$1,100.00 was what she paid for it.

Q. What was the blue book value of the 1948 Cadillac in July, 1953?

A. I don't have a July book. I have the [35] next book.

Mr. Wool: By the next book, what do you mean?

(Testimony of Peter Cottrell Scott.)

A. There are six issues a year. They go in sequence of two months, Your Honor. A 1948 Cadillac, Model Sixty-two, four door sedan is listed on the wholesale market at \$1,000.00 and \$1,300.00 on the retail side.

Mr. Razeto: May I see it? A. Yes.

Mr. Wool: What particular period of time is that?

A. This is the following month of 1953.

Mr. Razeto: What month is that?

A. September and October. It is the next issue.

Q. Do you have the book preceding that?

A. Sorry, I do not have it. You hardly ever keep these old ones. I just went down and borrowed this from a dealer for this purpose.

The Referee: Have you one, Mr. Walsh?

Mr. Walsh: I have one in my office. I will be glad to produce it.

The Witness: The difference in price is negligible.

Q. (By Mr. Razeto): How much would you say, Mr. Scott? A. Possibly \$50.00.

Q. It would depreciate at the rate of \$50.00 a month?

A. Over two months. As a matter of fact, sometimes a couple of hundred dollars over the weeks. I think you could substantiate that. [36]

Mr. Razeto: Your Honor, if it was a 1948 Cadillac, it would not be over the value. My impression was the former testimony was a 1952, not a 1948.

Mr. Wool: Are you dismissing that, Counsel?

(Testimony of Peter Cottrell Scott.)

Mr. Razeto: No, I am just making the statement for the record. I want to check to see if this is a 1948.

Q. You have the car here, have you?

A. No.

Q. You sold it?

A. No. I haven't any ownership in it.

Q. Is your wife with you?

A. She does not have that car with her. I don't think she has the automobile in her possession.

The Referee: Take a ten minute recess at this time.

(Recess.)

The Referee: You may proceed.

Q. (By Mr. Razeto): Mr. Scott, on December 18, 1953, when you filed the petition in bankruptcy, you had in your possession about \$615.00 of trust funds of Mrs. Smith's from the sale of her automobile, did you not?

A. Mrs. Smith had a credit on my books for \$615.00 for the sale of a 1941 Buick automobile.

Q. In other words, you were her agent for the sale of her automobile and had recovered \$615.00 for the sale of same, did you not? A. Yes, sir.

Q. And you did not turn that money over to her, did you? [37] A. No, sir.

Q. Did you account to her for that money? I mean, did you render her a written statement of how much you sold the car for? A. Verbal.

Mr. Razeto: That is all.

The Referee: Cross-examine?

(Testimony of Peter Cottrell Scott.)

Cross-Examination

By Mr. Wool:

Q. Mr. Scott, do you recall the exact amount of the disbursements in connection with the sale of the Hicks Avenue property, which you made to Barbara D. Stevens in January, 1953?

A. Approximately, sir.

Q. Do you know, can you recall the balance of money which you received?

A. Yes, sir. \$5,300.00 either seventeen or seventy-five, something like that. \$5,300.00 and some-odd dollars.

Q. You have already testified that you paid to Mr. A. J. De Smet, or had paid out of the escrow, \$10,500.00?

A. Yes, sir.

Q. The difference between that and these two sums you mentioned and the \$16,000.00 was used for what purpose?

A. I deposited \$5,000.00 in my account in the bank and used it in my business.

Q. That is your \$5,375.90?

A. Yes, sir.

Q. Were there or were there not certain expenses in connection [38] with the sale?

A. There was a title bond, I recollect.

Q. You don't recall that?

A. The amounts, whatever the title charge was for the title insurance and that sort of thing was taken from it. Revenue stamps. I don't have.

Q. Would this refresh your memory?

(Testimony of Peter Cottrell Scott.)

A. Thank you, sir. The sale price was \$16,000.00. Demand of A. J. De Smet, \$10,500.00, recording Deed and Reconveyance, \$4.00; title fee, \$99.00; Revenue stamps, \$17.60; trustee fee, \$3.50; balance due \$5,375.90.

Q. Now, you state you deposited that \$5,000.00 in your account? A. Yes, sir.

Q. What account was that?

A. My business account.

Q. Did you have any other account?

A. No, sir.

Q. What became of the \$375.90?

A. I took that for expense money, to live on.

Mr. Wool: I offer this in evidence if there is no objection.

Mr. Razeto: No, objection.

The Referee: Bankrupt's No. 1.

(Document headed "San Jose Abstract & Title Insurance Co.," was admitted in evidence as Bankrupt's Exhibit No. 1.)

Q. (By Mr. Wool): With reference to the 1948 Cadillac, how long had you had that on the lot, Mr. Scott?

A. Approximately a year and a half. [39]

Q. And was that clear or was it encumbered in any way?

A. It was floored with the American Trust Company on the regular flooring plan.

The Referee: Trust receipt?

The Witness: Trust receipt, yes, sir.

(Testimony of Peter Cottrell Scott.)

Q. (By Mr. Wool): And there was some money due under that? A. \$1,050.00.

Q. And?

A. Or thereabouts, maybe forty-six or forty-seven; I am not positive.

Q. Had there been any—had the bank been urging you or had they been attempting to collect this flooring on this?

A. Yes. It is out of the ordinary to carry a car that long and they were making a demand on me to reduce my flooring at the time on that.

Q. And was or was not the value of the automobile depreciating?

A. Constantly, every month, as shown by the book.

Q. You had attempted over this period of time to sell it? A. Yes, sir.

Q. Then, you sold it to Mrs. Scott?

A. Yes, sir.

Q. Did you believe that to be a fair value for that automobile?

A. It was much better than I received from later models that I sold under duress.

Q. Now, with reference—oh——

By the way, did you furnish or transfer or place at the disposal of Barbara Stevens any part of that \$16,000.00 which she paid for the Hicks Avenue property? [40] A. No, sir.

Q. And did you place at the disposal of Mrs. Scott——

Mr. Razeto: I object to that as leading and sug-

(Testimony of Peter Cottrell Scott.)

gestive, Your Honor.

Mr. Wool: I am cross-examining.

The Referee: It is cross-examination.

Mr. Wool: Did you place at the disposal of Mrs. Scott, give her or lend her, credit her in any way with any part of the \$1,098.00 which was paid for the 1948 Cadillac automobile?

A. No, sir. The major portion of that was given to the bank.

Q. Well, what you received for it, the amount that she paid, have you given her any portion of the amount she paid for that? A. No, sir.

Q. Calling your attention to the \$615.00. It is with respect to the 1948 Buick? A. 1941.

Q. Will you state to His Honor all of the transaction you had with Mrs. Smith with respect to this 1948 Buick. A. 1941.

Q. 1941 Buick; pardon.

A. Mrs. Smith gave me the car to sell for her and I, in turn, sold the automobile, took a trade-in, sold the trade-in. The final disposition of the automobile was \$615.00, which we set up on my books as a credit to Mrs. Smith. In discussing it, I told Mrs. Smith what we had received for the automobile. Sometime later in the year, I gave Mrs. Smith a check for [41] sixty-some-odd dollars as ten per cent interest on this amount of money, which she received, and it continued on my books as a credit to Mrs. Smith, which I used in my business. At no

(Testimony of Peter Cottrell Scott.)

time did I pay Mrs. Smith any of the principle of this amount received for this automobile.

Q. Did you discuss with her at any time the payment of it?

Mr. Razeto: May we have a foundation for any conversation regarding this transaction, Counsel?

Mr. Wool: I just asked if he discussed it at any time with Mrs. Smith.

A. At various times. And at one time Mrs. Smith said, "I don't need——"

Mr. Razeto: May we have a foundation? I object unless you lay a foundation to that particular conversation.

The Referee: Do you remember when it was?

A. Sometime during 1952.

Q. Where? A. At my house.

Q. She was with you? A. Yes.

Q. Was anybody else present besides Mrs. Smith and yourself? A. Not that I recall, sir.

Q. (By Mr. Wool): Proceed. What was the conversation?

A. That she did not need the money at that time and would just as well have the interest on it.

Q. What rate of interest were you paying on it?

A. I paid her a check for one year's interest at ten per cent.

Mr. Wool: I have no further cross-examination. I [42] do expect to recall the witness again.

The Referee: Very well.

(Testimony of Peter Cottrell Scott.)

Redirect Examination

Mr. Razeto: Just one question.

Q. Mr. Scott——

Mr. Razeto: May I see their Exhibit No. 1?

Q. On January 26, 1953, when you arranged to sell your house to Mrs. Stevens——

Mr. Wool: Just a minute, Counsel. What is the date of the escrow? Let's stick to the actual facts.

Q. (By Mr. Razeto): About January 26, when you executed the Deed to Mrs. Stevens in the office of your attorney, Mr. Wool, in her presence, did you come to any agreement regarding the retention of any interest in the property?

A. I did not get that.

Q. Did you have any understanding or agreement with Mrs. Stevens as to any interest you might have in the property you were selling to her?

Mr. Wool: I don't understand that question either. A. What interest?

Q. (By Mr. Razeto): Well, if she should resell it, would you get any money back?

A. No.

Q. Was there any understanding when she was to resell it? A. No. [43]

Q. How did you arrive at the consideration of \$16,000.00?

A. In discussing it with Jeffries, a real estate man down there, and upon the Real Estate Board's appraisal during the probate of the estate the prop-

(Testimony of Peter Cottrell Scott.)

erty was valued at something around \$14,000.00 at that time by them, and I thought \$16,000.00 would be a fair price.

Q. Did you enter into any agreement with Mrs. Stevens to the effect that you would still manage the property for her, help her sell it, anything like that?

A. No.

Q. You continued to live in the house after you sold it to her, did you not? A. Yes.

Q. How long did you remain in possession after you sold it to Mrs. Stevens?

A. Well, just in one day. I moved to 2015 Ray Drive when I returned from being married.

Q. In other words, after executing the deed at your attorney's office, you took off for Reno. Is that true? A. The following day.

Q. And married Mrs. Stevens? A. Right.

Q. Afterwards you returned to San Jose or Burlingame? A. Ray Drive.

Q. You never went back to your San Jose home?

A. On occasions I went back. I had personal things I had to get out.

Q. You had all of your furniture there?

A. Yes, sir.

Q. Household furniture and equipment?

A. Yes, sir. [44]

Q. The house was empty then from January 14, when you married Mrs. Stevens, until it was sold to the Johnsons?

A. Other than several times as when we stayed

(Testimony of Peter Cottrell Scott.)

there or I happened to stay in San Jose overnight for some particular reason, that I stayed there.

Q. You never told your friends or associates that you had sold the house to your wife, did you?

The Referee: Wasn't the Deed of record?

Mr. Razeto: Well, a person's statements also are important. Those are constructive notices; I understand.

Q. Did you ever tell anyone you had sold the property to your wife?

Mr. Wool: I object. You are not cross-examining.

Q. (By Mr. Razeto): I am just asking. Why are you hesitating?

A. I am waiting for you to get through.

Q. I am through.

A. I cannot say offhand. I have told a number of people, but just exactly who, I don't keep a diary.

Q. You know a James Wayne, a broker in San Jose, do you not? A. Yes.

Q. James Wayne was the person you contacted to sell the house. Wasn't he the broker you retained to sell the house in 1953?

Mr. Wool: Just a moment. There is no evidence——

Mr. Razeto: I am going to show it was never the intention of this man to release control of this property.

The Referee: He was her husband. [45]

Mr. Wool: Under the law of California, she could——

(Testimony of Peter Cottrell Scott.)

Mr. Razeto: This, Your Honor, was all a transaction to defeat creditors. That is all it was.

The Referee: I cannot assume it from the record.

Mr. Razeto: That is what I am trying to prove. But I am not having the opportunity. Here we have the facts: This man went to James Wayne and hired him to sell this house here for \$18,500.00; he got it in October of the same year. In other words, he and his wife were in collaboration in the entire thing to defeat creditors.

The Referee: So far as this property is concerned, I tell you the Court cannot see that at all.

Mr. Razeto: Very well. At least I want to present the fact. I have been overruled many times.

The Referee: On the objection by Counsel, the ruling is the same at this time.

Mr. Razeto: He has opened the transaction by offering Exhibit 1, relating to Exhibit 1——

The Witness: That is my transaction.

Mr. Razeto: But these were the same people.

The Referee: What are you talking about?

Mr. Razeto: The lady married the next day. That proves by inference that this man deeds to his wife in his attorney's office, the next day he marries her; eight months later he hires a broker to sell for a \$2,000.00 profit.

The Referee: If it were \$10,000.00 it would not [46] make any difference.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
The Ninth Circuit.

(Testimony of Peter Cottrell Scott.)

Q. (By Mr. Razeto): Did you ever rent this house after you sold it to Mrs. Stevens?

A. No.

Q. Who paid the taxes in April of 1953?

A. I don't know.

Q. You did, did you not, Mr. Scott?

A. I could have.

Q. You know you did. There is a record that you paid that in the Tax Collector's Office in San Jose.

The Referee: Listen. She was his wife at that time, wasn't she? She put up \$16,000.00 for the property.

Mr. Razeto: He paid the taxes and he did not rent it at all.

The Witness: No.

The Referee: I pay a lot of my wife's bills.

Mr. Wool: If that is going to be the rule——

Mr. Razeto: I am just presenting my facts. I would like to submit this.

The Referee: I want you to file briefs. I am going to have it submitted.

Mr. Razeto: Very well. These particularly: In re Kearny 116 Fed.(2nd) 899. This was where a transfer was made to a mother-in-law. There was a loan of \$13,000.00; he transferred the business. She paid off the \$13,000.00 and there was a difference of \$2,400.00 The Court held it was not fair consideration in the absence of proof. Here we [47] have a transfer with \$2,400.00 difference.

That is all.

The Referee: You have \$2,500.00 on a \$16,000.00 transaction.

Mr. Razeto: That may be so. This was \$2,300.00.

The Referee: Is the matter submitted?

Mr. Wool: I have had no direct examination as yet.

The Referee: I know. If you want to go ahead, go ahead. I tell you frankly, that unless I am mistaken on the law, I can rule on the case right now.

Mr. Wool: The bankrupt rests.

(Bankrupt rests.)

The Referee: Very well. Ten, ten and five for briefs.

(Submitted 10-10-5.)

[Endorsed]: Filed October 14, 1954, Referee. [48]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Specification of objections to discharge.

Order, Judgment and decree sustaining opposition to bankrupt's discharge in bankruptcy and denying such discharge.

Petition for review of referee's order by judge.

Certificate and report of referee relative to petition for review of referee's order, judgment and decree sustaining opposition to bankrupt's discharge in bankruptcy and denying such discharge.

Order.

Association of attorneys.

Notice of appeal.

Designation of record on appeal.

Cost bond on appeal.

1 volume of reporter's transcript of July 27, 1954, before the Referee.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 18th day of July, 1955.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ WM. C. ROBB.
Deputy Clerk.

[Endorsed]: No. 14834. United States Court of Appeals for the Ninth Circuit. Peter Cottrell Scott, Appellant, vs. Norma Smith, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed July 18, 1955.

In the United States Court of Appeals
For the Ninth Circuit

No. 14834

In the Matter of

PETER COTTRELL SCOTT,

Bankrupt.

STATEMENT OF POINTS ON APPEAL

To Paul P. O'Brien, Clerk of the above-entitled
Court:

Peter Cottrell Scott, the appellant in the above-entitled action, hereby states the points that he will rely on in this appeal:

(1) The referee erred in concluding that the words "This Note Secured by a Deed of Trust Bear in Even Date Herewith" on a promissory note constituted a financial statement within the meaning of Sec. 14, (C) (3) of the Bankruptcy Act.

(2) There is no evidence to support the finding that Norma Smith by purported false Statement in writing was induced to, and in reliance thereon did make loan to Bankrupt.

SMITH, WOOL & PERREN,

By /s/ FRED A. WOOL.

[Endorsed: Filed September 8, 1955.]